

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

JAMES C. CLEEK, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 4:21-cv-00027-DGK
)	
AMERISTAR CASINO KANSAS CITY, LLC,)	
)	
Defendant.)	

DEFENDANT’S MOTION FOR SUMMARY JUDGMENT

In accordance with Federal Rule of Civil Procedure 56 and Local Rule 56.1, Defendant Ameristar Casino Kansas City, LLC (“Ameristar”) respectfully moves for summary judgment in its favor concerning Plaintiffs’ claims in this matter.

As shown and explained in Ameristar’s contemporaneously filed suggestions in support of its motion, incorporated here by reference, the undisputed material facts establish that Plaintiff James Cleek (“Mr. Cleek”) fell on the sidewalk outside of Ameristar’s premises when he slipped on ice that had accumulated naturally as a result of ongoing freezing rain that affected the general community. Plaintiffs allege, as the basis for their claims, that Ameristar was negligent in failing to remove or treat or otherwise address the accumulation of ice that caused Mr. Cleek to fall. However, the well-established law in Missouri is that a property owner or inviter has “*no duty* to remove snow or ice on outside areas where the snow or ice accumulated naturally as a result of general weather conditions within the community.” *Medlock v. St. John’s Health Sys., Inc.*, 426 S.W.3d 35, 38–39 (Mo. App. S.D. 2014) (affirming summary judgment for the defendants and stating that “St. John’s had no duty to make the icy sidewalk upon which Amanda slipped and fell safe under circumstances where the ice had formed as a result of

freezing rain that had not yet abated”) (citing *Willis v. Springfield Gen. Osteopathic Hosp.*, 804 S.W.2d 416, 419 (Mo. App. S.D. 1991)); *see also O’Donnell v. PNK (River City), LLC*, 619 S.W.3d 162, 167 (Mo. App. E.D. 2021) (affirming summary judgment for the defendant casino where the plaintiff slipped and fell on ice outside of the casino’s entrance as freezing rain was falling); *Richey v. DP Props., LP*, 252 S.W.3d 249, 250 (Mo. App. E.D. 2008) (affirming a directed verdict for the defendants where the plaintiff slipped and fell on icy stairs outside of a building’s entrance); *Milford v. May Dep’t Stores Co.*, 761 S.W.2d 231, 232 (Mo. App. E.D. 1988) (“To hold that a duty exists to make a parking lot safe as precipitation falls from the sky would be to create a duty which would be virtually impossible to perform.”).

Plaintiffs’ claims in this case fall squarely within the rule articulated and applied in the cases cited above, and just as the plaintiffs’ claims in those cases failed, so too do Plaintiffs’ claims here. As a matter of law, Plaintiffs cannot demonstrate that Ameristar had any duty to remove or remediate the ice on which Mr. Cleek fell where the ice accumulated naturally from weather conditions that affected the general community and where Mr. Cleek fell in the midst of active freezing rain. In the absence of a duty, there cannot be negligence. For these reasons, and as further explained in Ameristar’s suggestions accompanying this motion, Ameristar requests that the Court grant summary judgment in Ameristar’s favor.

WHEREFORE, Ameristar respectfully requests that the Court grant its motion for summary judgment and enter judgment in its favor. Ameristar requests such other and further relief as the Court deems just and proper.

Respectfully submitted,

LEWIS RICE LLC

/s/Joseph E. Bant

Robert W. Tormohlen #40024

Scott A. Wissel #49085

Joseph E. Bant #61145

Lewis Rice LLC

1010 Walnut, Suite 500

Kansas City, Missouri 64106

(816) 421-2500

(816) 472-2500 (fax)

rwormohlen@lewisricekc.com

sawissel@lewisricekc.com

jebant@lewisricekc.com

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of May, 2021, I filed the foregoing using the Court's electronic filing system, which provided service to all counsel of record, including:

Thomas E. Hankins

Hankins & Conklin, P.C.

6812 North Oak Trafficway, Suite 5

Gladstone, MO 64118-2587

tomhankinslaw@cs.com

COUNSEL FOR PLAINTIFFS

/s/Joseph E. Bant

Attorney for Defendant

00569643.DOCX